

MPUC Docket Nos. E-017, E-015, ET-6 / TL-07-1327

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application for a  
Route Permit for the Bemidji – Grand  
Rapids 230kV Transmission Project

**FIRST PREHEARING ORDER**

A prehearing conference was held October 2, 2009 at 10:00 a.m. in the Commission's small hearing room before Administrative Law Judge Eric L. Lipman.

The following persons noted their appearance: Thomas Erik Bailey, Briggs and Morgan, appeared on behalf of the Applicants Otter Tail Power Company, Minnesota Power and Minnkota Power Cooperative, Inc. (Applicants). Karen Finstad Hammel, Assistant Attorney General, appeared on behalf of the Department of Commerce Office of Energy Security (OES). Robert Cupit, Minnesota Public Utilities Commission, appeared on behalf of the Public Utilities Commission (the Commission or MPUC).

Based on the discussions during the prehearing conference, and upon all of the files, the Administrative Law Judge makes the following:

**ORDER**

**Jurisdiction and Procedure**

1. By Order dated June 30, 2008, the Minnesota Public Utilities Commission (Commission) in MPUC Docket Nos. E-017, E-015, ET-6 / TL-07-1327 issued its Order for Hearing of the above-referenced matter. By the terms of that Order, the Commission referred this matter to the Office of Administrative Hearings to develop a record on the transmission line route "after the draft environmental impact statement is prepared."

2. This scheduling order organizes proceedings such that transmittal of the Administrative Law Judge's report and a final decision by the Commission can occur within the time period set forth in Minn. Stat. § 216E.03, subdivision 9, as adjusted by the Applicants' Notice of Waiver of October 13, 2009.<sup>1</sup>

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<sup>1</sup> See, E-Docket No. 200910-42785-01.

## Parties and Intervention

3. Only the Applicants were named as a party by the Commission in its Notice and Order for Hearing.

4. Any person desiring to become a formal party must file a Petition to Intervene by 4:30 p.m. on **Tuesday, January 19, 2010**. Any person petitioning to intervene after that date may be restricted as to the scope of their participation. Any existing party that wishes to object must file an objection within seven days of service of the petition. Petitions to Intervene shall comply with Minn. R. 1400.6200.

5. Members of the public need not become formal parties in order to participate in the hearing. Members of the public may offer either oral or written testimony, and they may offer exhibits for inclusion in the record. As detailed below, several hearings for receiving public comment will be held.

6. Any person who desires to be placed on the service list as a non-party participant must file a written request with the Administrative Law Judge and provide a copy of this same request to Robert Cupit of the MPUC. Any person may subscribe to this docket so as receive electronic notices of filings through the E-Docket system.

## Schedule

7. The following schedule is adopted for this proceeding:

Milestone	Date
Applicant's Pre-Filing of Direct Testimony	January 6, 2010
Release Date for the Draft EIS	January 6, 2010
Closing Date for Intervention	January 19, 2010
Intervenor's Pre-Filing of Direct Testimony, Submission of OES Comments	January 26, 2010
Public Meetings on the Draft EIS	January 26 – 28, 2010
Pre-Filing of Rebuttal Testimony, Submission of Additional OES Comments	February 2, 2010
Closing Date for Comments on the Draft EIS	February 8, 2010
Contested Case Hearings	February 8 – 10, 2010
Closing Date for Post-Hearing Public Comments	February 22, 2010
Submission of Initial Post-Hearing Briefs, OES Comments	March 1, 2010

Issuance of Final EIS	March 15, 2010
Submission of Response Post-Hearing Briefs, OES Comments	March 22, 2010
ALJ Report	April 21, 2010
Submissions of Exceptions to ALJ Report	May 3, 2010

## **Procedure**

8. This proceeding will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 through 14.62; the rules of the Office of Administrative Hearings, Minn. R. 1400.5100 through 1400.8400; and, to the extent that they are not superseded by the Contested Case Rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200.

## **Filing of Documents**

9. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

10. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

11. The official record copy shall, wherever practicable, be filed using the E-file system. Prior to the issuance of the Report of the Administrative Law Judge, any exhibit that cannot be E-Filed must be filed by delivery or mailing to the Administrative Law Judge, at:

Honorable Eric L. Lipman  
Administrative Law Judge  
Office of Administrative Hearings

Mailing Address: P.O. Box 64620  
St. Paul, MN 55164-0620

Street Address: 600 North Robert Street  
St. Paul, MN 55101

12. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission, as specified by the Commission.

13. Copies of all documents shall be served on the persons listed on the attached service list, in the manner indicated. E-filing is sufficient service on those

persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list maintained on the MPUC E-Service system.

14. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is E-filed with the Commission.

15. Proof of service shall be filed with each filed document or within three business days thereafter.

16. Trade Secret and other nonpublic data shall be transmitted by United States Mail or courier, not by e-mail. Trade Secret and other nonpublic data filed with the Administrative Law Judge or Commission shall be prepared and marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The Revised Procedures are accessible at: [http://www.puc.state.mn.us/portal/groups/public/documents/pdf\\_files/000671.pdf](http://www.puc.state.mn.us/portal/groups/public/documents/pdf_files/000671.pdf).

## **Discovery**

17. Discovery shall be by information request and response. Further discovery may be had in accordance with Minn. R. 1400.6700 - 1400.6900 by agreement or by motion to the Administrative Law Judge.

18. Information Requests shall normally be made by e-mail to the person from whom the information is sought and a copy shall be e-mailed to all parties. Information Requests containing references to other documents shall be sufficiently detailed to inform the other parties of the nature of the request. Information Requests and responses shall not be E-filed, sent to the Administrative Law Judge or sent to the Court Reporter. The party responding to the Information Request shall provide the information requested within ten business days after receipt of the request. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to other parties unless specifically requested by a party. Information Requests received after 4:00 p.m. on business days or on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day.

19. In the event the information cannot be supplied within the required time, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be made by Electronic mail, if practicable, and may be heard by telephone conference among the Administrative Law Judge and affected parties.

20. Parties asked to provide information they deem confidential or nonpublic may require the requesting party to comply with the terms of a reasonable protective agreement or the Minnesota Government Data Practices Act. A protective Order may be obtained upon application to the Administrative Law Judge.

### **Prefiled Testimony and Order of Testimony**

21. At the hearing, prefiled testimony and exhibits shall be offered and received as hearing exhibits and exhibit numbers shall be assigned at that time. In the case of E-filed documents, the sponsoring party will provide the unique E-file system designation on the document. Prefiled testimony that is amended in total or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all substantive revisions or corrections to any prefiled testimony shall be filed with the Administrative Law Judge and served on the parties no later than 4:30 p.m. on Friday, February 5, 2010. E-filing shall be used to the extent practicable.

22. Except for good cause shown, only matters that are offered in reply to another party's direct or evidence shall be offered in rebuttal exhibits.

23. Unless the parties agree otherwise, the order of testimony and questioning in the Stage One sessions of the hearing shall be: the Applicants, Intervenor in order of intervention, and OES.

### **Examination of Witnesses**

24. Witnesses shall be permitted five minutes to summarize the key contentions in their prefiled testimony. Additional time may be allowed by the Administrative Law Judge, if necessary, or to permit a witness to respond to new issues raised by other parties in those instances in which no response was previously allowed.

25. Parties, if they are represented by counsel, shall examine and cross-examine witnesses through their attorneys. Any party not represented by counsel may examine and cross-examine witnesses through any one representative chosen by the party. Only parties may examine witnesses during the evidentiary hearing.

26. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party files and serves an objection prior to commencement of the evidentiary hearing. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not the subject of an objection shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

27. This Order may be amended upon application to the Administrative Law Judge for good cause shown.

Dated: October 23, 2009

s/ Eric L. Lipman

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ERIC L. LIPMAN  
Administrative Law Judge